

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GEORGE FRANCIS ASHER

Claimant

VS.

THE BOEING COMPANY

Respondent

AND

INS. CO. STATE OF PENNSYLVANIA,

c/o AIG CLAIMS SERVICES

Insurance Carrier

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Docket No. 1,007,698

ORDER

Claimant appeals the March 25, 2003 preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was denied benefits after the Administrative Law Judge found that claimant had not provided timely notice as required by K.S.A. 44-520.

ISSUES

- (1) Did claimant submit timely notice of accident pursuant to K.S.A. 44-520?
- (2) Did respondent have actual knowledge of claimant's injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant, a more-than-14-year employee of respondent, began developing problems in his hands as early as 1993. In 1999, he was diagnosed with arthritis in his hands. Claimant had a history of arthritis in his feet and his hips before this time. Claimant had also been diagnosed with hypertension and diabetes.

Claimant discussed his hand problems with his lead man, Steven Fike, and with his supervisor, Steve Burden. However, claimant advised both Mr. Fike and Mr. Burden that his complaints were connected to his preexisting arthritis. Claimant did not request medical treatment, nor did he go to Boeing Central Medical with these hand complaints.

On December 14, 2001, claimant was laid off in a general layoff. He had been advised of this impending layoff approximately 60 days prior to the layoff date.

Claimant collected unemployment benefits for 39 weeks and then decided that he would retire. In November 2002, claimant went to his family doctor, Mark A. Leiker, M.D., with ongoing hand problems. Dr. Leiker referred claimant for diagnostic tests. The nerve conduction studies which were performed indicated that claimant suffered from bilateral carpal tunnel syndrome. Claimant advised respondent by certified mail on December 2, 2002, of his intent to file a workers' compensation claim for his hands.

K.S.A. 44-520 mandates that notice of accident be provided to an employer within ten days of the accident. Claimant acknowledges the only conversations he had with respondent's representatives prior to his December 14, 2001 last day of work were discussions with his lead man and his supervisor regarding his bilateral arthritis. Claimant, at no time, alleged a work-related injury during these conversations and sought no treatment with Boeing Central Medical.

Claimant contends that respondent had actual knowledge of his condition. K.S.A. 44-520 states ". . . except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary."

The Board must again turn to claimant's testimony that he did not discuss any type of accident with the employer or with his supervisors. Claimant was unaware that he had suffered any type of accident, being only aware that he had been diagnosed with arthritis in his hands. The first knowledge of a work-related aggravation to his hands did not occur until November 2002, nearly a year after claimant's last day of employment with respondent. The Board acknowledges that actual knowledge of the accident renders the giving of notice unnecessary. However, there is no evidence in the record to support a finding that respondent had any knowledge of an accident or that claimant's condition was work related.

The Board, therefore, finds that claimant did not satisfy the requirements of K.S.A. 44-520. Notice was not timely provided and respondent did not have actual knowledge of claimant's injury or accident. Therefore, the determination by the Administrative Law Judge to deny benefits in this matter should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated March 25, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant
Frederick L. Haag, Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation